IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 172 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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M/S. MAHENDRA OIL CAKE INDUSTRIES PVT. LTD.-Appellant(s)
Versus
WANKANER MUNICIPALITY – Respondent (s)

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Appearance :
SHRI MEHUL S. SHAH for Appellant(s).
SHRI J.V. MEHTA for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/01/2007

ORAL JUDGMENT

1. The appellants, being aggrieved by the Judgement and Decree dated 24th July, 1992 passed in Regular Civil Appeal No.15 of 1985 by the learned 2nd

Extra Assistant Judge, Morvi (District: Rajkot), reversing the Judgement and Decree dated 23rd January, 1985 passed in Regular Civil Suit No.75 of 1980 by the learned Civil Judge (S.D.), Wankaner, who, in his turn, has decreed the suit, have filed this appeal under Section 100 of the Code of Civil Procedure, 1908.

2. The appeal has been admitted for hearing the parties on the following substantial questions of law:

> *"(1) Whether the suit is barred by limitation as provided by Section 153 of the Gujarat Municipalities Act?*
> *(2) Whether the Civil Court has no jurisdiction to try this suit?*
> *(3) Whether the suit is not maintainable?*
> *(4) Whether the demand notice dated 11-1-1980 is ultra vires and illegal?"*

3. The short facts necessary for disposal of the present appeal are that the plaintiffs had filed Regular Civil Suit No.75 of 1980, seeking a declaration from the trial Court that the rap-seed, the item in dispute, would fall under the Clause 15 of Schedule II of the Octroi Rules and not under the residuary items, as provided under Schedule III. They also sought a declaration that the notice dated 11th January, 1980 demanding the dues of octroi be held to be invalid. It is not in dispute before

me that the plaintiff, a private Company, had imported certain rap-seeds within the area of the Municipality, who all through had been contending that the rap-seeds would not fall under Entry No.15 of Schedule II of the Octroi Rules, the total quantity brought by the plaintiff-Company was 2,557 Metric Tonnes valuing Rs.63,07,730/-.

3.1 The defendant-Municipality *vide* its letter dated 9th March, 1979 informed the plaintiffs that the item imported by the plaintiffs would not fall within Schedules I and II, but, would fall under Schedule III and octroi at the rate of Rs.1.40 per Rs.100 would be payable on the value of the goods. The plaintiffs, all through, asserted that octroi could be levied at the rate of Rs.0.50 per Rs.100/-. A bill in the sum of Rs.88,308.22 was issued to the plaintiffs by the defendant-Municipality. The plaintiffs again contested their liability and did not choose to pay the money. Thereafter, an order under Section 132(2) of the Gujarat Municipalities Act, 1963 (“the Act” for short) was made; a notice of payment was issued to the plaintiffs; and, the plaintiffs, being aggrieved by the said demand notice, filed the above referred suit.

3.2 The defendant after putting in appearance filed its written statement, contending that the suit was not maintainable; the item would fall within Schedule III; and, the suit is barred by limitation because the same was not filed within a period of six months from the date of accrual of the cause of action.

3.3 The learned trial Court, after casting issues, granted appropriate opportunity of leading evidence to the parties. After hearing the parties, it held that the rap-seeds in dispute would fall under Entry No.15 of Schedule-II, octroi could be levied at the rate of Rs.0.50 per Rs.100/-, the suit was maintainable and was not barred by limitation. It, accordingly, held in favour of the plaintiffs and directed that no recovery/additional recovery could be made from the plaintiffs. Being aggrieved by the said judgement and decree, the defendant filed a Regular Civil Appeal.

3.4 The learned Appellate Court though held that the imported rap-seeds would fall under Entry No.15 of Schedule-II, but, held the suit to be not maintainable and that the same was barred by limitation. Being aggrieved by the said judgement and decree, the plaintiffs are again before this Court.

4. Shri Mehul S. Shah, learned Counsel for the appellants, submits that the learned first Appellate Court went wrong in counting limitation from the date of the bill. According to him, the cause of action would accrue in favour of the plaintiffs from the date of the demand notice. He also submits that if the suit is within limitation and the item falls under Entry No.15 of Schedule-II, the suit could not be dismissed. The submission is that the learned first Appellate Court did not hold the suit to be not maintainable under any other provisions of law, but, has held the same to be not maintainable because it was not within limitation.

5. Shri J. V. Mehta, learned Counsel for the respondent, submits that the first cause of action would accrue in favour of the plaintiffs on the date of issuance of the bill and if that would be the starting point of limitation, any subsequent notice/demand notice or bill would not arrest running or starting of the limitation.

6. Section 132 of the Gujarat Municipalities Act, relevant for the purpose of this appeal reads as under:

> *"132. **Presentation of bill for taxes.**- (1) When any amount,-*
> *(a) which by or under any provisions of this*

Act, is declared to be recoverable in the manner provided by this Chapter, or
(b) which, not being leviable under sub-sec. (1) of sec. 127 or payable on demand on account of an octroi or a toll, is claimable as an amount or instalment on account of any other tax which now is imposed or hereafter may be imposed in any municipal borough,
shall have become due, the chief officer shall with the least practicable delay, cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

***Contents of bill**.-- (2) Every such bill shall specify the period of which, and the property, occupation or thing in respect of which the sum is claimed and shall also give notice of the liability incurred in default of payment and of the time within which an appeal may be preferred as hereinafter provided against such claim.*

(3) If the person to whom a bill has been presented as aforesaid does not, within fifteen days from the presentation thereof, either-
(a) pay the sum claimed as due in the bill, or
(b) show cause to the satisfaction of the chief officer why he is not liable to pay the same, or
(c) prefer an appeal in accordance with the provisions of sec. 138 against the claim,
the chief officer may cause to be served upon the person liable for the payment of the said

sum a notice of demand in the form specified in Schedule IV or to the like effect."

A fair understanding of the provisions would make it clear that when a person imports certain goods, which are subject to levy of octroi, and has not paid appropriate octroi duty, a bill shall be issued to him and after receiving the bill, such person shall make payment of the bill. If such person does not, within 15 days from the presentation of the bill, pays the sum, or shows cause to the satisfaction of the Chief Officer that why he is not liable to pay the said sum, the Chief Officer may issue a notice of demand. If the law gives authority in favour of the importer that on receipt of the bill, he would be entitled to show cause to the Chief Officer or may challenge the bill under Section 138 of the Act, then, the bill may provide the cause of action either for showing the cause or to file an appeal or to throw a challenge to the said bill, but, would not curtail the right of such person to show cause. In a given case, where a reply is filed by the noticee if a final order is made on the same, then, that final order would provide cause of action in favour of such importer either to challenge the order by way of an appeal or by way of any appropriate proceedings. In the opinion of this Court, the learned first Appellate Court was not

justified in holding that the starting point of limitation would be the date of the bill and not the date of the demand notice. In the opinion of this Court, the demand notice, which threatens recovery and makes an inroad into the rights of the importer, would certainly provide cause of action in favour of the importer. I hold that the suit is within limitation.

7. Once the suit is held to be within limitation and the findings recorded by the two Courts that the rap-seeds would fall under Entry No.15 of Schedule II of the Octroi Rules, then, there is no escape from the conscience that the plaintiffs could be levied octroi at the rate of Rs. 0.50 only.

8. The learned first Appellate Court was also unjustified in holding that as the suit is barred by limitation, the Civil Court would have no jurisdiction to try the suit. It appears that the learned first Appellate Court did not properly appreciate the question of jurisdiction of the Court to try the suit. A Civil Court would be entitled to try all the disputes of the civil nature, unless the same are specifically barred either under Section 9 of the Code of Civil Procedure or under any other law in particular. Simply because a suit is

barred by limitation, the Civil Court would not lose its jurisdiction to try the suit. In a case where the suit is barred under one or the other provisions of law and the Civil Court is not entitled to entertain and decide the suit, the Court would dismiss the suit under Order-VII, Rule-11 of the Code, but, in a case where the suit is barred by limitation, the Court would dismiss the suit on merits of the matter.

9. Section 253 of the Act provides limitation for filing a suit against the Municipality. It says that no suit shall lie against a municipality or against any officer or servant of a municipality in respect of any act done in pursuance or execution or intended execution of the Act, or in respect of any alleged neglect or default in the execution of the Act, unless it is instituted within six months next after the accrual of the cause of action; and, until the expiration of one month after notice in writing has been served upon the Municipality.

10. In the present case, I have already held that the cause of action would be the date of service of the notice of demand. If from that date, the period is calculated, giving concession for the period of one month

of the notice period, the suit would be within limitation. Accordingly, I hold that the suit is within limitation, and answer Question Nos.1, 2, 3 and 4 in favour of the plaintiffs.

11. The findings recorded by the learned first Appellate Court cannot be approved; the same deserve to and are, accordingly, set aside so far as they relate to limitation and maintainability of the suit. The suit was rightly decreed by the trial Court.

12. The appeal is allowed. The judgement and decree passed by the learned first Appellate Court is set aside and that of the learned trial Court are hereby restored. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**